



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2015-0622; FRL-9936-84-Region 9]**

**Approval and Promulgation of Implementation Plans; California;**

**California Mobile Source Regulations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the California State Implementation Plan (SIP) consisting of state regulations establishing standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines. The EPA is proposing to approve these regulations because they meet the applicable requirements of the Clean Air Act and are relied upon by various California plans intended to provide for the attainment or maintenance of the national ambient air quality standards.

**DATES:** Any comments must arrive by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit comments, identified by docket number [EPA-R09-OAR-2015-0622], by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow

the on-line instructions.

2. *E-mail*: *lo.doris@epa.gov*.

3. *Mail or deliver*: Doris Lo (AIR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions*: All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail. [www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to the EPA, your e-mail address will be automatically captured and included as part of the public comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any

defects or viruses.

*Docket:* Generally, documents in the docket for this action are available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Doris Lo, EPA Region IX, (415) 972-3959, [lo.doris@epa.gov](mailto:lo.doris@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

## **Table of Contents**

### I. Background

### II. The State’s Submittal

- A. What regulations did the state submit?
- B. Are there other versions of these regulations?
- C. What is the purpose of the submitted regulations?
- D. What requirements do the regulations establish?

### III. EPA's Evaluation and Proposed Action

A. How is the EPA evaluating the regulations?

B. Do the state regulations meet CAA SIP evaluation criteria?

1. Did the state provide adequate public notification and comment periods?

2. Does the state have adequate legal authority to implement the regulations?

3. Are the regulations enforceable as required under CAA section 110(a)(2)?

4. Do the regulations interfere with reasonable further progress and attainment or any other applicable requirement of the Act?

5. Will the state have adequate personnel and funding for the regulations?

6. EPA's evaluation conclusion.

C. Proposed Action and Request for Public Comment.

### IV. Incorporation by Reference

### V. Statutory and Executive Order Reviews

#### **I. Background**

Under the Clean Air Act ("Act" or CAA), the EPA establishes national ambient air quality standards (NAAQS) to protect public health and welfare, and has established such ambient standards

for a number of pervasive air pollutants including ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, lead and particulate matter. Under section 110(a)(1) of the CAA, states must submit plans that provide for the implementation, maintenance, and enforcement of the NAAQS within each state. Such plans are referred to as state implementation plans (SIPs) and revisions to those plans are referred to as SIP revisions. Section 110(a)(2) of the CAA sets forth the content requirements for SIPs. Among the various requirements, SIPs must include enforceable emission limitations and other control measures, means, or techniques as may be necessary or appropriate to meet the applicable requirements of the CAA. CAA section 110(a)(2)(a).

As a general matter, the CAA assigns mobile source regulation to the EPA through title II of the Act and assigns stationary source regulation and SIP development responsibilities to the states through title I of the Act. In so doing, the CAA preempts various types of state regulation of mobile sources as set forth in section 209(a) (preemption of state emissions standards for new motor vehicles and engines), section 209(e) (preemption of state emissions standards for new

and in-use off-road vehicles and engines),<sup>1</sup> and section 211(c)(4)(A) [preemption of state fuel requirements for motor vehicle emission control, i.e., other than California's motor vehicle fuel requirements for motor vehicle emission control--see section 211(c)(4)(B)]. For certain types of mobile source emission standards, the State of California may request a waiver (for motor vehicles) or authorization (for off-road engines and equipment) for standards relating to the control of emissions and accompanying enforcement procedures. See CAA sections 209(b) (new motor vehicles) and 209(e)(2) (most categories of new and in-use off-road vehicles).

Over the years, the California Air Resources Board (CARB) has submitted many requests for waiver or authorization of its standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines, and the EPA has granted many such requests. For example, the EPA has granted waivers for CARB's Low Emission Vehicle (LEV III) criteria pollutant standards for light- and medium duty vehicles, and has authorized emissions standards for

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<sup>1</sup> EPA regulations refer to "nonroad" vehicles and engines whereas California regulations refer to "off-road" vehicles and engines. These terms refer to the same types of vehicles and engines, and for the purposes of this action, we will be using the state's chosen term, "off-road," to refer to such vehicles and engines.

such off-road vehicle categories as commercial harbor craft, and forklifts and other industrial equipment. See 78 FR 2112 (January 9, 2013) (advanced clean cars), 76 FR 77521 (December 13, 2011) (commercial harbor craft), and 77 FR 20388 (April 4, 2012) (forklifts and other industrial equipment).

Also over the years, CARB has submitted, and the EPA has approved, many local or regional California air district rules regulating stationary source emissions as part of the California SIP. See, generally, 40 CFR 52.220(c). With respect to mobile sources in general, California has submitted, and the EPA has approved, certain specific state regulatory programs, such the in-use, heavy-duty, diesel-fueled truck rule, various fuels regulations, and the vehicle inspection and maintenance program (I/M, also known as "smog check"). See, e.g., 77 FR 20308 (April 4, 2012) (in-use truck and bus regulation), 75 FR 26653 (May 12, 2010) (revisions to California on-road reformulated gasoline and diesel fuel regulations), and 75 FR 38023 (July 1, 2010) (revisions to California motor vehicle I/M program).

California relies on these local, regional, and state stationary and mobile source regulations to meet various CAA requirements and includes the corresponding emissions reductions in the various regional air quality plans developed to attain

and maintain the NAAQS. The EPA generally allows California to take credit for the corresponding emissions reductions relied upon in the various regional air quality plans because, among other reasons, the regulations are approved as part of the SIP and are thereby federally enforceable as required under CAA section 110(a)(2)(A).

However, California also relies on emissions reductions from the regulations for which the EPA has previously granted waivers or authorizations, and historically, the EPA has approved regional air quality plans that take credit for emissions reductions from such regulations, notwithstanding the fact that California has not submitted these particular regulations as part of the California SIP.

The EPA's longstanding practice of approving California plans that rely on emissions reductions from such "waiver measures," notwithstanding the lack of approval as part of the SIP, was challenged in several petitions filed in the Ninth Circuit Court of Appeals. In a recent decision, the Ninth Circuit held in favor of the petitioners on this issue and concluded that CAA section 110(a)(2)(A) requires that all state and local control measures on which SIPs rely to attain the NAAQS be included in the SIP and thereby subject to enforcement



by the EPA and members of the general public. See *Committee for a Better Arvin v EPA*, 786 F.3d 1169 (9th Cir. 2015).

In response to the decision in *Committee for a Better Arvin v. EPA*, CARB submitted a SIP revision on August 14, 2015 consisting of state mobile source regulations that establish standards and other requirements for the control of emissions from various new on-road and new and in-use off-road vehicles and engines for which the EPA has issued waivers or authorizations and that are relied upon by California regional plans to attain and maintain the NAAQS. The EPA is proposing action today under CAA section 110(k) on CARB's August 14, 2015 SIP revision submittal.

## **II. The State's Submittal**

### **A. What regulations did the state submit?**

On August 14, 2015, CARB submitted a SIP revision that included a set of state mobile source regulations for which waivers or authorizations have been granted by the EPA under section 209 of the CAA. The SIP revision consists of the regulations themselves and documentation of the public process conducted by CARB in approving the regulations as part of the California SIP. Table 1 below presents the contents of the SIP revision by mobile source category and provides, for each such

category, a listing of the relevant sections of the California Code of Regulations (CCR) that establish standards and other requirements for control of emissions from new or in-use vehicles or engines; the corresponding date of CARB's hearing date or Executive Officer (EO) action through which the regulations or amendments were adopted; and the notice of decision in which the EPA granted a waiver or authorization for the given set of regulations.<sup>2</sup>

**TABLE 1: CARB SIP Revision Submittal Summary**

Source Category	Relevant Sections of California Code of Regulations	Date of Relevant CARB Hearing Date(s) or Executive Officer Action	EPA Notice of Decision
On-Road Passenger Cars, Light-Duty Trucks, and Medium-	Amendments to 13 CCR §§ 1961, 1965, and 1978 and the documents incorporated by reference (see table 2 below), effective for state	12/12/02, 6/22/06	70 FR 22034 (4/28/05); 75 FR 44948

<sup>2</sup> CARB's August 14, 2015 SIP submittal included a table that lists the specific sections of the CCR included in the submittal. By email dated October 23, 2015, CARB identified a few typographic errors in the table: (1) 13 CCR sections 2456(d)(3), 2456(d)(5), and 2456(d)(6) (i.e., not sections 2455(d)(3), 2455(d)(5), and 2455(d)(6)) are excluded from the submittal of regulations establishing standards and other requirements for the portable equipment registration program (PERP); (2) 13 CCR section 2485(1)(B) (not just section 2385(1)(A)) is excluded from the submittal of regulations related to truck idling; (3) and 13 CCR section 2474 is to be included in the submittal of regulations related to spark-ignition marine engines. See email from Alex Wong, CARB, to Jefferson Wehling, EPA Region IX, dated October 23, 2015.

Duty Vehicles (LEV II)	law purposes on 12/04/03; and amendments to 13 CCR §§ 1961, 1976, 1978, and documents incorporated by reference (see table 2 below), effective for state law purposes on 2/17/07.		(7/30/10)
On-Road Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles (LEV III) and Zero Emission Vehicles (ZEV)	Adoption of 13 CCR §§ 1961.2 and 1962.2 (excluding subsection 1962.2(g)(6)) and amendments to 13 CCR §§ 1900, 1956.8, 1960.1, 1961, 1962.1, 1962.2 (re-numbered to 1961.3), 1965, 1976, 1978, 2037, 2038, 2062, 2112, 2139, 2140, 2145, 2147, and 2235 and the documents incorporated by reference (see table 2 below), effective for state law purposes on 08/07/12; amendments to 13 CCR §§ 1900, 1956.8, 1960.1, 1961, 1961.2, 1962.1, 1962.2 (excluding subsection 1962.2(g)(6)(C)), and 1976 and the documents incorporated by reference (see table 2 below), effective for state law purposes on 12/31/12.	01/26/12, 11/15/12	78 FR 2112 (1/9/13)
On-Road Heavy-Duty Gasoline Engines	13 CCR § 1956.8 and the document incorporated by reference (see table 2 below), effective for state law purposes on 12/4/03.	12/12/02, 9/5/03 (EO)	75 FR 70237 (11/17/10)
On-Road Heavy-Duty Diesel Engines	Amendments to 13 CCR § 1956.8, and the document incorporated by reference (see table 2 below), effective for state law purposes on 11/17/02.	10/25/01	70 FR 50322 (8/26/05)
On-Road	Amendments to 13 CCR §§	12/10/98	71 FR

Motorcycles	1900, 1958 (excluding 1958(a)(1)), and 1965, and the document incorporated by reference (see table 2 below), effective for state law purposes on 11/22/99.		44027 (8/3/06)
On-Road Heavy-Duty Engines - On-Board Diagnostic System (HD OBD)	13 CCR §§ 1971.1 and 1971.5, effective for state law purposes on 6/17/10.	5/28/09	77 FR 73459 (12/10/12)
On-Road Heavy Duty Vehicles - engine or vehicle idle controls	13 CCR §§ 1956.8, 2404, 2424, 2425, and 2485 (excluding subsections 2485(c)(1)(A), 2485(c)(1)(B), and 2485(c)(3)(B)), and the document incorporated by reference (see table 2 below), effective for state law purposes on 11/15/2006.	10/20/05	77 FR 9239 (2/16/12)
In-Use Diesel-Fueled Transport Refrigeration Units	13 CCR § 2477, as amended, effective for state law purposes on 3/7/11.	11/18/10	78 FR 38970 (6/28/13)
Commercial Harbor Craft	17 CCR § 93118.5 (excluding subsection 93118.5(e)(1)), effective for state law purposes on 11/19/08.	11/15/07, 9/2/08 (EO)	76 FR 77521 (12/13/11)
Off-Road Large Spark-Ignition (LSI) Engines	New LSI engine emissions standards: 13 CCR §§ 2430, 2431, 2433, 2434, and 2438; LSI fleet requirements: 13 CCR §§ 2775, 2775.1 and 2775.2, and the documents incorporated by reference (see table 2 below), effective for state law purposes on 5/12/07.	5/25/06, 3/2/07 (EO)	77 FR 20388 (4/4/12)
Auxiliary Diesel	13 CCR § 2299.3 and 17 CCR § 93118.3, effective for	12/6/07, 10/16/08	76 FR 77515

Engines on Ocean-Going Vessels	state law purposes on 01/02/09.	(EO)	(12/13/11)
In-Use Off-Road Diesel Fueled Fleets	13 CCR §§ 2449 (excluding subsection 2449(d)(2)) 2449.1, and 2449.2, effective for state law purposes on 12/14/11.	5/25/07, 7/26/07, 12/11/08, 1/22/09, 7/23/09, 12/17/10	78 FR 58090 (9/20/13)
Mobile Cargo Handling Equipment (CHE)	13 CCR § 2479 (excluding subsections (e)(2) and (e)(4)), as amended, effective for state law purposes on 10/14/12.	9/22/11	80 FR 26249 (5/7/15)
Small Off-Road Engines (SORE)	13 CCR §§ 2401, 2403, 2404, 2405, 2406, 2408, 2408.1, and 2409, and the document incorporated by reference (see table 2 below), effective for state law purposes on 5/5/10.	11/21/08	80 FR 26041 (5/6/15)
Off-Road Compression - Ignition (CI) Engines	13 CCR §§ 2420, 2421, 2423, 2424, 2425, 2425.1, 2426, and 2427, and the documents incorporated by reference (see table 2 below), effective for state law purposes on 1/6/06.	1/27/00, 12/9/04	75 FR 8056 (2/23/10)
In-Use Portable Diesel-Fueled Engines (PDE)	17 CCR §§ 93116 through 93116.5 (excluding subsection 93116.3(a)), effective for state law purposes on 3/11/05.	2/26/04	77 FR 72846 (12/6/12)
Portable Equipment Registration Program (PERP)	13 CCR §§ 2451, 2452, 2453, 2455 (excluding subsections 2455(a) and 2455(b)), 2456 (excluding subsections 2456(a), 2456(d)(3), 2456(d)(5), and 2456(d)(6)), 2458, 2459, 2460, 2461, and 2462, as amended, effective for state law purposes on 9/12/07.	3/27/97, 7/31/07 (EO), 12/10/98, 2/26/04, 6/22/06, 3/22/07	77 FR 72851 (12/6/12)

Spark-Ignition Marine Engines and Boats (Marine SI)	13 CCR §§ 2111, 2112, Appendix A therein, 2139, 2147, 2440, 2442, 2443.1, 2443.2, 2444.1, 2444.2, 2445.1, 2445.2, 2446, 2447 and 2474, and the documents incorporated by reference (see table 2 below), effective for state law purposes on 08/16/09.	7/24/08, 6/5/09 (EO)	80 FR 26032 (5/16/15)
Off-Highway Recreational Vehicles and Engines (OHRV)	13 CCR §§ 2111, 2112, 2411, 2412, and 2413, and the document incorporated by reference (see table 2 below), effective for state law purposes on 8/15/07.	7/20/06	79 FR 6584 (2/4/14)

The regulations submitted by CARB and listed in table 1 incorporate by reference certain documents that establish test procedures and labeling specifications, among other things, and CARB submitted the documents as part of the overall SIP revision. Table 2 lists the incorporated documents included in the SIP submittal.

**TABLE 2: Documents Incorporated by Reference in CARB Regulations Listed in Table 1, Above, and Submitted as Part of SIP Revision**

<b><i>On-Road Passenger Cars, Light-Duty Trucks, and Medium-Duty and Heavy-Duty Vehicles (LEV II):</i></b>
California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles, as last amended September 5, 2003.
California Motor Vehicle Emission Control and Smog Index Label Specifications for 1978 through 2003 Model Year Motorcycles, Light-, Medium- and Heavy-Duty Engines and Vehicles," as last amended September 5, 2003.

California Smog Index Label Specifications for 2004 and Subsequent Model Passenger Cars and Light-Duty Trucks," adopted September 5, 2003.
California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended September 5, 2003.
California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as amended June 22, 2006.
California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended June 22, 2006.
California Exhaust Emission Standards Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended June 22, 2006.
<b><i>On-Road Passenger Cars, Light-Duty Trucks, and Medium-Duty and Heavy-Duty Vehicles (LEV III) and Zero Emission Vehicles (ZEV):</i></b>
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, as last amended March 22, 2012.
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines, as last amended March 22, 2012.
California Non-Methane Organic Gas Test Procedures, as last amended March 22, 2012.
California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended March 22, 2012, excluding GHG-related provisions.
California Environmental Performance Label Specifications for 2009 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles, as last amended March 22, 2012.
California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended March 22, 2012.
California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended March 22, 2012.
Specifications for Fill Pipes and Openings of 1977 through 2014

Model Motor Vehicle Fuel Tanks, as last amended March 22, 2012.
Specifications for Fill Pipes and Openings of 2015 and Subsequent Model Motor Vehicle Fuel Tanks, adopted March 22, 2012.
California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, adopted March 22, 2012, excluding GHG-related provisions.
California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, as last amended March 22, 2012, excluding GHG-related provisions.
California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, adopted March 22, 2012, excluding GHG-related provisions.
California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended December 6, 2012, excluding GHG-related provisions.
California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended December 6, 2012, excluding GHG-related provisions.
California Non-Methane Organic Gas Test Procedures, as last amended December 6, 2012.
California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended December 6, 2012
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines, as last amended December 6, 2012.
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, as last amended December 6, 2012.
California Exhaust Emission Standards and Test Procedures for



2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, as last amended December 6, 2012.
California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, adopted December 6, 2012, excluding GHG-related provision.
<b><i>On-Road Heavy-Duty Gasoline Engines:</i></b>
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-cycle Engines, as last amended December 12, 2002.
<b><i>On-Road Heavy-Duty Diesel Engines:</i></b>
California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, as last amended October 25, 2001.
<b><i>On-Road Motorcycles:</i></b>
California Motor Vehicle Emission Control and Smog Index Label Specifications, as last amended October 22, 1999.
<b><i>On-Road Heavy Duty Vehicles - Reduced Idling:</i></b>
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines, as last amended September 1, 2006.
<b><i>Off-Road Large Spark-Ignition (LSI) Engines:</i></b>
California Exhaust Emission Standards and Test Procedures for New 2001 through 2006 Off-Road Large Spark-Ignition Engines, Parts I and II, adopted September 1, 1999 and as last amended March 2, 2007.
California Exhaust and Evaporative Emission Standards and Test Procedures for 2007 through 2009 Off-Road Large Spark-Ignition Engines, (2007-2009 Test Procedure 1048), adopted March 2, 2007.
California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition

Engines, (2010 and Later Test Procedure 1048), adopted March 2, 2007.
California Exhaust and Evaporative Emission Standards and Test Procedures for New 2007 and Later Off-Road Large Spark-Ignition Engines (Test Procedures 1065 and 1068), adopted March 2, 2007.
<b><i>Small Off-Road Engines (SORE):</i></b>
California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines, as last amended February 24, 2010.
<b><i>Off-Road Compression-Ignition (CI) Engines:</i></b>
California Exhaust Emission Standards and Test Procedures for New 2000 and Later Tier 1, Tier 2, and Tier 3 Off-Road Compression-Ignition Engines, Part I-B, adopted January 28, 2000 and as last amended October 20, 2005.
California Exhaust Emission Standards and Test Procedures for New 1996 and Later Tier 1, Tier 2, and Tier 3 Off-Road Compression-Ignition Engines, Part II, adopted May 12, 1993 and as last amended October 20, 2005.
California Exhaust Emission Standards and Test Procedures for New 2008 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I-C, adopted October 20, 2005.
<b><i>Spark-Ignition Marine Engines and Boats (Marine SI):</i></b>
California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines, as last amended June 5, 2009.
Procedures for Exemption of Add-On and Modified Parts for Off-Road Categories, as last amended June 5, 2009.
<b><i>Off-Highway Recreational Vehicles and Engines (OHRV):</i></b>
California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles, and Engines, as last amended August 15, 2007.

It is important to note that CARB has expressly excluded

from the August 14, 2015 SIP submittal certain sections or subsections of California code that have been authorized or waived by the EPA under CAA section 209. The excluded provisions pertain to:

- Greenhouse Gas (GHG) exhaust emission standards for 2009 through 2016 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, and 2017 and subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; and
- GHG related provisions incorporated in the test procedures.

Also, CARB has expressly excluded certain sections or subsections of California code that are not subject to preemption under CAA section 209 and thus not included in the related waiver or authorization by the EPA. These provisions pertain to:

- Fuel requirements;
- Idling restrictions on drivers;
- Opacity standards;
- Daily mass emission limits (from the PERP regulations); and
- Certain labeling and consumer notification requirements.

Section III.B.4 below provides further discussion of these excluded provisions.

**B. Are there other versions of these regulations?**

As noted previously, the CAA generally assigns to the EPA the responsibility of establishing standards for the control of emissions from mobile sources. However, the State of California was a pioneer in establishing standards for the control of emissions from new motor vehicles, and, in part due to the state's pioneering efforts, Congress established in 1967 a process under which California, alone among the states, would be granted a waiver from preemption (if certain criteria are met) and thereby enforce its own standards and other requirements for the control of emissions from new motor vehicles. In the 1990 CAA Amendments, Congress extended a similar process that had been established under section 209 for new motor vehicles to new and in-use off-road vehicles and engines. See CAA section 209(e)(2). Under the 1990 CAA Amendments, the EPA must authorize California standards for the control of emissions of off-road vehicles and engines if certain criteria are met.

The first waiver granted was for California's On-Road Emissions Standards for Model Year 1968. (See 33 FR 10160, July 16, 1968.) Since then, there have been dozens of waivers and authorizations granted by the EPA for new and amended CARB mobile source regulations. The EPA's Office of Transportation

and Air Quality maintains a website that provides a general description of the waiver and authorization process and lists all of the various waivers and authorizations granted by the Agency to CARB over the years. See <http://www.epa.gov/otaq/cafr.htm>.

Historically, as noted above, CARB regulations subject to the section 209 waiver or authorization process were not submitted to the EPA as a revision to the California SIP. Thus, for the purposes of the California SIP, there are no previous versions of the rules addressed in today's proposed action.

**C. What is the purpose of the submitted regulations?**

Historically, California has experienced some of the most severe and most persistent air pollution problems in the country. Under the CAA, based on ambient data collected at numerous sites throughout the state, the EPA has designated areas within California as nonattainment areas for the ozone NAAQS and the particulate matter (both PM<sub>10</sub> and PM<sub>2.5</sub>) NAAQS. See, generally, 40 CFR 81.305. California also includes a number of areas that had been designated as nonattainment areas for the carbon monoxide NAAQS that the EPA has redesignated as attainment areas because they have attained the standard and are subject to an approved maintenance plan demonstrating how they

will maintain the carbon monoxide standard into the future.

Mobile source emissions constitute a significant portion of overall emissions of carbon monoxide, volatile organic compounds (VOC), oxides of nitrogen ( $\text{NO}_x$ ), sulfur dioxide ( $\text{SO}_2$ ) and particulate matter (PM) in the various air quality planning areas within California, and thus, the purpose of CARB's mobile source regulations is to reduce these emissions and thereby reduce ambient concentrations to attain and maintain the NAAQS throughout California.<sup>3</sup> At elevated levels, ozone and PM harm human health and the environment by contributing to premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems.

#### **D. What requirements do the regulations establish?**

Table 3 below describes the applicability of the regulations listed in table 1 above and summarizes some of the key emissions control requirements contained in the rules.

**TABLE 3: General Description of Requirements established in the Mobile Source Regulations included in the August 14, 2015 SIP Revision**

Source	Description of Requirements in Submitted
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<sup>3</sup> VOC and  $\text{NO}_x$  are precursors responsible for the formation of ozone, and  $\text{NO}_x$  and  $\text{SO}_2$  are precursors for fine particulate matter ( $\text{PM}_{2.5}$ ).  $\text{SO}_2$  belongs to a family of compounds referred to as sulfur oxides ( $\text{SO}_x$ ).  $\text{PM}_{2.5}$  precursors also include VOC and ammonia. See 40 CFR 51.1000.

Category	Regulation
On-Road Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles (LEV II)	CARB's "LEV II" regulations establish exhaust and evaporative emissions standards (and test procedures) for model year (MY) 2004 through 2014 passenger cars, light-duty trucks, and medium-duty passenger vehicles. The LEV II regulations also include the adoption of Compliance Assurance Program "CAP 2000" amendments that establish new motor vehicle certification and in-use test requirements - developed jointly with the U.S. Environmental Protection Agency - applicable to 2001 and subsequent model motor vehicles. For more information about CARB's LEV II regulations, see 68 FR 19811 (April 22, 2003), 70 FR 22034 (April 28, 2005), and 75 FR 44948 (July 30, 2010).
On-Road Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles (LEV III) and Zero Emission Vehicles (ZEV)	CARB's LEV III and ZEV amendments combine the control of criteria air pollutants and GHG emissions into a single coordinated package of requirements for MY 2015 through 2025 passenger cars, light-duty trucks, and medium-duty passenger vehicles. The requirements amend the exhaust and evaporative emissions standards, the test procedures, and the on-board diagnostic system specifications. (The standards related to GHG emissions are not included in the SIP revision submittal.) For more information about CARB's LEV III and ZEV amendments, see 78 FR 2112 (January 9, 2013).
On-Road Heavy-Duty Gasoline Engines	CARB's on-road heavy-duty gasoline engine regulations establish exhaust emission standards for heavy-duty Otto-cycle engines and vehicles above 8,500 pounds gross vehicle weight rating (GVWR) for the 2004, 2005 through 2007, and the 2008 and subsequent MYs. These regulations align each of California's exhaust emission standards and test procedures with its federal counterpart in an effort to streamline and harmonize the California and federal programs. For more information about CARB's on-road heavy-duty gasoline engine regulations, see 75 FR 70237 (November 17, 2010).
On-Road Heavy-Duty Diesel	CARB's On-Road Heavy-Duty Diesel Engine regulations establish heavy-duty diesel regulations for 2007 and subsequent model year

Engines	vehicles and engines (2007 California Heavy Duty Diesel Engine Standards) and related test procedures including the not-to-exceed (NTE) and supplemental steady state tests (supplemental test procedures) to determine compliance with applicable standards. CARB's 2007 California Heavy Duty Diesel Engine Standards primarily align California's standards and test procedures with the federal standards and test procedures for 2007 and subsequent model year on-road heavy-duty vehicles and engines. For more information about CARB's On-Road Heavy-Duty Diesel Engine regulations, see 70 FR 50322 (August 26, 2005)
On-Road Motorcycles	CARB's regulations establish exhaust emissions standards and test procedures for new on-road motorcycles and motorcycle engines. For additional information about CARB's motorcycle regulations, see 71 FR 44027 (August 3, 2006).
On-Road Heavy-Duty Engines - On-Board Diagnostic System (HD OBD)	CARB's HD OBD regulations establish requirements for onboard diagnostic systems (OBD systems) that are installed on 2010 and subsequent model-year engines certified for sale in heavy-duty applications in California. The OBD systems, through the use of an onboard computer(s), monitor emission systems in-use for the actual life of the engine and are capable of detecting malfunctions of the monitored emission systems, illuminating a malfunction indicator light (MIL) to notify the vehicle operator of detected malfunctions, and storing fault codes identifying the detected malfunctions. For more information about CARB's HD OBD regulations, see 77 FR 73459 (December 10, 2012).
On-Road Heavy Duty Vehicles - engine or vehicle idle controls	As submitted, CARB's truck idling requirements consist of "New engine requirements" that require new California-certified 2008 and subsequent model year on-road diesel engines in vehicles with a gross vehicle weight rating (GVWR) greater than 14,000 pounds ( <i>i.e.</i> , heavy-duty diesel vehicles or "HDDV"s) be equipped with a system that automatically shuts down the engine after five minutes of continuous idling. For more information about CARB's truck idling requirements, see 77 FR 9239 (February 16, 2012).



In-Use Diesel-Fueled Transport Refrigeration Units (TRUs)	Establishes in-use performance standards for diesel-fueled TRUs and TRU generator sets operating in California, and facilities where TRUs operate. In-use TRU engines are required, through one of the compliance options set forth in the regulations (e.g., retrofit or replacement), to meet specific performance standards that vary by horsepower range, and that have two levels of stringency that are phased in over time - the Low Emission TRU Standards, beginning in 2008, and the Ultra-Low Emission TRU Standards beginning in 2010. More stringent performance standards are required at 7-year intervals until the Ultra-Low TRU standards are met. For more information about CARB's in-use TRU regulations, see 74 FR 3030 (January 16, 2009) and 78 FR 38970 (June 28, 2013).
Commercial Harbor Craft	CARB's commercial harbor craft regulations establish emissions standards, requirements related to control of emissions, and enforcement provisions applicable to diesel propulsion and auxiliary engines on new and in-use commercial harbor craft. For new harbor craft, each propulsion and auxiliary diesel engine on the vessel is required to be certified to the most stringent federal new marine engine emission standards for that engine's power rating and displacement in effect at the time of sale, lease, rent, or acquisition. The regulation imposes additional requirements for larger new ferries (with the capacity to transport seventy-five or more passengers), either by using best available control technology ("BACT"), or by using a federal Tier 4 certified propulsion engine. For in-use harbor craft, new or in-use diesel engines may not be sold, offered for sale, leased, rented, or acquired unless the diesel propulsion or auxiliary engines are certified to at least the federal Tier 2 or Tier 3 marine emission standards for new engines of the same power rating and displacement. In-use emission requirements are imposed on Tier 0 and Tier 1 marine engines in ferries, excursion vessels, tugboats, towboats, push boats, and multipurpose harbor craft. Those harbor craft are

	required to meet emission limits equal to or cleaner than the federal new marine engine certification standards in effect for the year that in-use engine compliance is required. For more information about CARB's commercial harbor craft regulations, see 76 FR 77521 (December 13, 2011).
Off-Road Large Spark-Ignition (LSI) Engines	CARB's LSI regulations establish more stringent emissions standards for new off-road LSI engines (25 hp or greater, gasoline- or LPG-powered, excluding construction and farm equipment) beginning in 2007 (increasing in stringency in 2010), and in-use fleet requirements for forklifts and other industrial equipment with LSI engines. The fleet average in-use emission standards apply to operators of large- and medium-sized fleets of forklifts, sweepers/scrubbers, airport ground supported equipment (GSE), and industrial two tractors with engine displacements of greater than one liter. For more information about CARB's LSI regulations, see 77 FR 20388 (April 4, 2012).
Auxiliary Diesel Engines on Ocean-Going Vessels	CARB's "At-Berth" regulation contains requirements that apply, with limited exceptions, to any person who owns or operates any container vessel, passenger vessel, or refrigerated cargo vessel that visits any of six specified California ports. It also contains requirements that affect any person who owns or operates those ports or terminals located at them. CARB's At-Berth regulation requires fleets of container vessels, passenger vessels and refrigerated cargo vessels to either: (1) Limit the amount of time they operate their auxiliary diesel engines by connecting to shore power for most of a vessel's stay at port ("Shore Power Option"); or (2) achieve equivalent emission reductions by employing other emission control techniques ("Equivalent Emission Reduction Option"). Fleet operators who elect the Shore Power Option are required to obtain the power that would otherwise be provided by a vessel's auxiliary engines by connecting to shore power for a percentage of the fleet's annual port visits. The required percentage of shore power connected port visits

	increases over the life of the regulation. Specifically, fifty percent of a fleet's total visits must be connected to shore power by 2014, followed by seventy percent by 2017, and eighty percent by 2020. For more information about CARB's At-Berth regulation, see 76 FR 77515 (December 13, 2011).
In-Use Off-Road Diesel Fueled Fleets	CARB's In-Use Off-Road Diesel-Fueled Fleets Regulation applies to fleets with off-road compression-ignition vehicles or equipment greater than 25 horsepower. The regulation takes effect beginning as early as 2014, depending on fleet size. It requires fleet operators to meet a progressively more stringent combined PM and NO <sub>x</sub> standard, or to reduce emissions through technology upgrades such as retrofit or replacement. For more information about CARB's In-Use Off-Road Diesel-Fueled Fleets Regulation, see 78 FR 58090 (September 20, 2013).
Mobile Cargo Handling Equipment (CHE)	CARB's mobile CHE regulation sets performance standards for engines equipped in newly purchased, leased, or rented (collectively known as "newly acquired"), as well as in-use, mobile cargo handling equipment used at ports or intermodal rail yards in California. The standards vary depending on the type of vehicle, whether the engine is used in off-road equipment or a vehicle registered as an on-road motor vehicle, and whether they are newly acquired or already in-use. For more information about CARB's mobile CHE regulation, see 77 FR 9916 (February 21, 2012) and 80 FR 26249 (May 7, 2015).
Small Off-Road Engines (SORE)	CARB's SORE regulations establish emissions standards for new spark ignition utility and lawn and garden equipment engines 25 horsepower and under. For more information about CARB's SORE regulations, see 80 FR 26041 (May 6, 2015).
Off-Road Compression - Ignition (CI) Engines	CARB's Off-Road CI Engine Regulations establish emissions standards for new off-road diesel-powered engines and equipment. For more information about CARB's Off-Road CI Engine Regulations, see 75 FR 8056 (February 23, 2010).
In-Use Portable	CARB's PDE regulation establishes requirements for in-use portable diesel-fueled engines 50 brake-

Diesel-Fueled Engines (PDE)	horsepower (hp) and greater. Specifically, starting on January 1, 2010, all portable engines in California must be certified to meet a federal or California standard for newly manufactured off-road engines. More stringent requirements apply beginning on January 1, 2020. Fleets of portable engines must comply with increasingly more stringent weighted PM emission fleet averages that apply on three different deadlines (January 1, 2013, January 1, 2017, and January 1, 2020). For more information about CARB's PDE regulation, see 77 FR 72846 (December 6, 2012).
Portable Equipment Registration Program (PERP)	PERP is a voluntary statewide program that enables registration of off-road engines and equipment that operate at multiple locations across California, so that the engine and equipment owners can operate throughout California without obtaining permits from local air pollution control districts. The PERP sets out four general requirements applicable to all registered equipment: (1) Registered equipment may not operate in a manner that causes a nuisance; (2) registered equipment may not interfere with attainment of national or state ambient air quality standard; (3) registered equipment may not cause an exceedance of an ambient air quality standard; and (4) owners of registered equipment must provide notice and comply with requirements for prevention of significant deterioration if it would constitute a major modification of that source. The PERP also has specific requirements for both registered engines and certain types of equipment units. For more information about CARB's PERP regulations, see 77 FR 72851 (December 6, 2012).
Spark-Ignition Inboard and Sterndrive Marine Engines	CARB's Inboard and Sterndrive Marine Engine regulations establish tier II hydrocarbon (HC) and NO <sub>x</sub> exhaust emissions standards for new inboard and sterndrive engines. For more information about CARB's Marine SI Engine regulations, see 72 FR 14546 (March 28, 2007) and 76 FR 24872 (May 3, 2011).
Spark-Ignition	CARB's Marine SI Engine regulations establish HC and NO <sub>x</sub> exhaust emissions standards for outboard,

Marine Engines and Boats (Marine SI)	inboard, and sterndrive engines and personal watercraft. For more information about CARB's Marine SI Engine regulations, see 72 FR 14546 (March 28, 2007), 76 FR 24872 (May 3, 2011), and 80 FR 26032 (May 6, 2015).
Off-Highway Recreational Vehicles and Engines (OHRV)	CARB's OHRV regulations establish exhaust and evaporative emission standards and test procedures for OHRVs. The regulations also establish a "red tag" program under which OHRVs not meeting the applicable emissions standards could be certified subject to use restrictions (i.e., use in specified areas during specified times of the year). For more information about CARB's OHRV regulations, see 79 FR 6584 (February 4, 2014).

### **III. EPA's Evaluation and Proposed Action**

#### **A. How is the EPA evaluating the regulations?**

The EPA has evaluated the submitted regulations discussed above against the applicable procedural and substantive requirements of the CAA for SIPs and SIP revisions and has concluded that they meet all of the applicable requirements. Generally, SIPs must include enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary to meet the requirements of the Act [see CAA section 110(a)(2)(A)]; must provide necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out such SIP (and is not prohibited by any provision of federal or state law from carrying out such SIP) [see CAA

section 110(a)(2)(E)]; must be adopted by a state after reasonable notice and public hearing [see CAA section 110(1)], and must not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act [see CAA section 110(1)].<sup>4</sup>

**B. Do the state regulations meet CAA SIP evaluation criteria?**

**1. Did the state provide adequate public notification and comment periods?**

Under CAA section 110(1), SIP revisions must be adopted by the state, and the state must provide for reasonable public notice and hearing prior to adoption. In 40 CFR 51.102(d), we specify that reasonable public notice in this context refers to at least 30 days.

All of the submitted regulations have gone through extensive public comment processes including CARB's workshop and hearing processes prior to state adoption of each rule. Also, the EPA's waiver and authorization processes provide an opportunity for the public to request public hearings to present

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<sup>4</sup> CAA section 193, which prohibits any pre-1990 SIP control requirement relating to nonattainment pollutants in nonattainment areas from being modified unless the SIP is revised to insure equivalent or greater emission reductions of such air pollutants, does not apply to these regulations because they would be new to the California SIP, and thus, do not constitute an amendment to a pre-1990 SIP control requirement.

information relevant to the EPA's consideration of CARB's request for waiver or authorization under section 209 of the CAA and to submit written comment.

In addition, on June 19, 2015, CARB published a notice of public meeting to be held on July 23, 2015 to consider adoption and submittal of the adopted regulations for which the EPA has granted waivers or authorization as a revision to the California SIP. CARB held the public hearing on July 23, 2015. No written comments were submitted to CARB in connection with the proposed SIP revision, and no public comments were made at the public hearing. CARB adopted the SIP revision at the July 23, 2015 Board Hearing (Board Resolution 15-40), and submitted the relevant mobile source regulations to the EPA on August 14, 2015 along with evidence of the public process conducted by CARB in adopting the SIP revision. We conclude that CARB's August 14, 2015 SIP revision submittal meets the applicable procedural requirements for SIP revisions under the CAA section 110(l) and 40 CFR 51.102.

**2. Does the state have adequate legal authority to implement the regulations?**

CARB has been granted both general and specific authority under the California Health & Safety Code (H&SC) to adopt and

implement these regulations. California H&SC sections 39600 ("Acts required") and 39601 ("Adoption of regulation; Conformance to federal law") confer on CARB the general authority and obligation to adopt regulations and measures necessary to execute CARB's powers and duties imposed by state law. California H&SC sections 43013(a) and 43018 provide broad authority to achieve the maximum feasible and cost-effective emission reductions from all mobile source categories. Regarding in-use motor vehicles, California H&SC sections 43600 and 43701(b), respectively, grant CARB authority to adopt emission standards and emission control equipment requirements. Further, California H&SC section 39666 gives CARB authority to adopt airborne toxic control measures to reduce emissions of toxic air contaminants from new and in-use non-vehicular sources.

As a general matter, as noted above, the CAA assigns mobile source regulation to the EPA through title II of the Act and assigns stationary source regulation and SIP development responsibilities to the states through title I of the Act. In so doing, the CAA preempts various types of state regulation of mobile sources as set forth in section 209(a) (preemption of state emissions standards for new motor vehicles and engines), section 209(e) (preemption of state emissions standards for new



and in-use nonroad vehicles and engines) and section 211(c) (4) (A) [preemption of state fuel requirements for motor vehicles, i.e., other than California's motor vehicle fuel requirements for motor vehicle emission control—section 211(c) (4) (B)]. For certain types of mobile source standards, the State of California may request a waiver (for motor vehicles) or authorization (for off-road vehicles or engines) for standards relating to the control of emissions and accompanying enforcement procedures. See CAA sections 209(b) (new motor vehicles) and 209(e) (2) (most categories of new and in-use off-road vehicles).

The mobile source regulations that are the subject of today's proposed rule are those for which California has sought a waiver or authorization and for which the EPA has granted such waiver or authorization and thus the regulations proposed for approval today are not preempted under the CAA.<sup>5</sup> For additional

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<sup>5</sup> We recognize that our authorization (78 FR 58090, September 20, 2013) for CARB's in-use off-road diesel-fueled fleet regulations has been challenged in both the D.C. Circuit and Ninth Circuit Court of Appeals. See *Dalton Trucking, Inc. v. EPA* (D.C. Cir., No 13-1283) and *Dalton Trucking, Inc. v. EPA* (9th Cir., No. 13-74019). The D.C. Circuit will hear oral arguments in the case on November 9, 2015. (The Ninth Circuit is holding the case in abeyance pending a decision by the D.C. Circuit concerning jurisdiction.) An adverse decision from the D.C. Circuit or Ninth Circuit that remands or vacates our authorization of CARB's in-use off-road diesel-fueled fleet regulations will prompt reconsideration of our approval of the regulations as part of the SIP because, absent authorization, CARB will be prohibited from enforcing the regulations and thus will no longer be able to provide the

information regarding California's motor vehicle emission standards, please see the EPA's "California Waivers and Authorizations" Web page at URL address: <http://www.epa.gov/otaq/cafr.htm>. This Web site also lists relevant **Federal Register** notices that have been issued by the EPA in response to California waiver and authorization requests.

In addition, the EPA is unaware of any non-CAA legal obstacle to CARB's enforcement of the regulations and thus we conclude that the state has provided the necessary assurances that the state has adequate authority under state law to carry out the SIP revision (and is not prohibited by any provision of federal or state law from carrying out such SIP) and thereby meets the requirements of CAA section 110(a)(2)(E) with respect to legal authority.

### **3. Are the regulations enforceable as required under CAA section 110(a)(2)?**

We have evaluated the enforceability of the submitted mobile source regulations with respect to applicability and exemptions; standard of conduct and compliance dates; sunset provisions; discretionary provisions; and test methods,

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necessary assurances called for in CAA section 110(a)(2)(E) for the subject regulations.

recordkeeping and reporting,<sup>6</sup> and have concluded for the reasons given below that the proposed regulations would be enforceable for the purposes of CAA section 110(a)(2).

First, with respect to applicability, we find that the submitted regulations would be sufficiently clear as to which persons and which vehicles or engines are affected by the regulations. See, e.g., 13 CCR section 2430 (applicability provision for off-road LSI engine emission standard regulation); 13 CCR section 2449(b) (applicability provision for in-use off-road diesel-fueled fleets regulation).

Second, we find that the submitted regulations would be sufficiently specific so that the persons affected by the regulations would be fairly on notice as to what the requirements and related compliance dates area. For instance, see the performance requirements for in-use off-road diesel-fueled fleets in 13 CCR section 2449(d). Third, none of the submitted regulations contain sunset provisions that automatically repeal the emissions limits by a given date or upon the occurrence of a particular event, such as the change in

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<sup>6</sup> These concepts are discussed in detail in an EPA memorandum from J. Craig Potter, EPA Assistant Administrator for Air and Radiation, *et al.*, titled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," dated September 23, 1987.

the designation of an area from nonattainment to attainment.<sup>7</sup>

Fourth, a number of the submitted regulations contain provisions that allow for discretion on the part of CARB's Executive Officer. Such "director's discretion" provisions can undermine enforceability of a SIP regulation, and thus prevent full approval by the EPA. However, in the instances of "director's discretion" in the submitted regulations, the discretion that can be exercised by the CARB Executive Officer is reasonably limited under the terms of the regulations. For instance, the regulation establishing standards and other requirements related to the control of emissions from commercial harbor craft includes alternative control of emissions (ACE) provisions that allow a person to be deemed in compliance by implementing an alternative emission control strategy (AECS) subject to the approval of the Executive Officer. See 13 CCR section 93118.5(f). The regulation specifies the application process for such an AECS, requires a number of demonstrations to be included (such as equivalent emissions reduction), and

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<sup>7</sup> The only such provisions in any of the submitted regulations are a sunset provision for alternative requirements in the ZEV regulations at 13 CCR section 1962.1(b)(2)(B)(3.), and a sunset review of the on-road motorcycle standards at 13 CCR section 1958(h). The latter provision requires CARB to review the on-road motorcycle standards in section 1958 to determine whether they should be retained, revised, or repealed. Any such revision or rescission would not become effective automatically, but would require rulemaking by CARB, and may also require a waiver from the EPA depending on the nature or the revision.

provides for public review. With such constraints on discretion, the "director's discretion" contained in the submitted regulations would not significantly undermine enforceability of the rules by citizens or the EPA.

Lastly, each of the submitted regulations identifies appropriate test methods and includes adequate recordkeeping and reporting requirements sufficient to ensure compliance with the applicable requirements. The technical support document provides more detail concerning the contents of the submitted regulations.

**4. Do the regulations interfere with reasonable further progress and attainment or any other applicable requirement of the Act?**

All of the state's reasonable further progress (RFP), attainment, and maintenance plans rely to some extent on the emission reductions from CARB's mobile source program, including the emissions standards and other requirements for which the EPA has issued waivers or authorizations. For some plans, the reliance is substantial and for others the reliance is less. CARB's mobile source program is reflected in the emissions estimates for mobile sources that are included in the emissions inventories that form the quantitative basis for the RFP, attainment, and maintenance demonstrations. As such, CARB's

mobile source regulations submitted for approval as a revision to the California SIP support the various RFP, attainment, and maintenance plans, and would not interfere with such requirements for the purposes of CAA section 110(1).

As noted above, CARB expressly excluded certain sections or subsections of California code from consideration as part of the SIP revision. These provisions relate to GHG motor vehicle emissions standards and test procedures, fuel requirements, idling limits, opacity standards, daily mass emission limits, and certain labeling and consumer notification requirements. We understand that the GHG provisions have been excluded because they provide minimal emissions reductions over the time period covered by the current generation of California RFP, attainment, and maintenance plans. With respect to the non-preempted provisions, we understand that they were not included in the August 14, 2015 SIP submittal because they are not "waiver measures" and thus are not relevant for the purposes of responding to the Ninth Circuit's decision in *Committee for a Better Arvin v. EPA*. However, we note the general principle that state emissions limitations and other control measures that are relied upon to meet CAA SIP requirements, such as RFP, attainment or maintenance demonstrations, must be approved into

the SIP to comply with the requirement for such limitations and other control measures to be enforceable for the purposes of CAA section 110(a)(2)(A). Thus, we encourage CARB to review the RFP, attainment, and maintenance plans for the various air quality planning areas in California to ensure that the plans do not rely on the associated emissions reductions from the provisions excluded from the August 14, 2015 SIP submittal.

**5. Will the state have adequate personnel and funding for the regulations?**

In its SIP revision submittal, CARB refers to the annual approval by the California Legislature of funding and staff resources for carrying out CAA-related responsibilities and notes that a large portion of CARB's budget has gone toward meeting CAA mandates.<sup>8</sup> CARB indicates that a majority of CARB's funding comes from dedicated fees collected from regulated emission sources and other sources such as vehicle registration fees and vehicles license plate fees and that these funds can only be used for air pollution control activities. *Id.* For the 2014-2015 budget cycle, CARB had over 700 positions and almost \$500 million dedicated for the mobile source program developing and enforcing regulations. *Id.* Given the longstanding nature of

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<sup>8</sup> Letter from Richard W. Corey, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region IX, August 14, 2015.

CARB's mobile source program, and its documented effectiveness at achieving significant reductions from mobile sources, we find that CARB has provided necessary assurances that the state has adequate personnel and funding to carry out the mobile source regulations submitted for approval as part of the California SIP.

**6. EPA's evaluation conclusion.**

Based on the above discussion, we believe these regulations are consistent with the relevant CAA requirements, and with relevant EPA policies and guidance.

**C. Proposed Action and Request for Public Comment.**

Under section 110(k)(3) of the CAA, and for the reasons given above, we are proposing to approve a SIP revision submitted by CARB on August 14, 2015 that includes certain sections of title 13 and title 17 of the California Code of Regulations that establish standards and other requirements relating to the control of emissions from new and in-use on-road and off-road vehicles and engines. We are proposing to approve these regulations as part of the California SIP because we believe they fulfill all relevant CAA requirements. We will accept comments from the public on this proposal until [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].



Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP for the State of California.

#### **IV. Incorporation by Reference**

In this proposed rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference certain sections of title 13 and title 17 of the California Code of Regulations that establish standards and other requirements relating to the control of emissions from new and in-use on-road and off-road vehicles and engines, as described in section II of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k);

40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: October 30, 2015.      Jared Blumenfeld,  
Regional Administrator,  
Region IX.

[FR Doc. 2015-28614 Filed: 11/10/2015 8:45 am; Publication Date: 11/12/2015]